

Vol. XXXIV

THE CHANCERY COURT
DAVIDSON COUNTY, TENNESSEE

HONORABLE ELLEN HOBBS LYLE, CHANCELLOR

MARIA M. SALAS, CLERK AND MASTER

ABU-ALI-ABDUR'RAHMAN, ET AL
Plaintiffs/Appellants



VOLUME 11 of 28

CERTIFIED
TRANSCRIPT
OF
Cause

Appearance No. 18-183-III
CHANCERY COURT

Vs
No. M2018-01385-SC-RDO-CV

SUPREME COURT

TRANSMITTED ON:

August 21, 2018

Execution No
SUPREME COURT

APPEALED
TO
Next Term,
20

TONY PARKER, IN HIS OFFICIAL CAPACITY AS TENNESSEE COMMISSIONER OF
CORRECTION, ET AL
Defendants/Appellees

Trial Transcript from July 12, 2018
Pages 1029 - 1136

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1 Q. And that the need for a defense
2 attorney to be able to reach the Court should
3 something go awry in an execution is also
4 important?

5 A. Yes.

6 Q. And you're aware, Commissioner Parker,
7 that currently attorneys are not permitted to
8 bring their cell phones on their person if
9 they are selected to witness an execution?

10 A. That's correct.

11 Q. And currently attorneys are not
12 allowed to use the telephone in the official
13 witness room; is that correct?

14 A. I believe that's correct.

15 Q. And during your deposition, you agreed
16 with me that providing telephone access to
17 defense counsel witnessing an execution was
18 something you thought you could arrange?

19 A. Yes. If I recall, I believe we
20 discussed that and I said it's something I
21 would certainly look at and consider and talk
22 to my team about. And I do remember saying
23 that it's important that you have
24 communications you need.

25 Q. Do you recall, Mr. Parker, my asking

1 you whether or not it would affect the safety
2 and security of the institution if an
3 attorney would be permitted to have access to
4 a landline during the execution? Do you
5 recall that question?

6 A. I vaguely remember that question, yes.

7 Q. And you told me that an attorney
8 having access to a landline would pose no
9 concerns as far as the safety and security of
10 the institution, correct?

11 A. I remember saying that, yes.

12 Q. And I asked you if it would be
13 possible for if, say, for example, that
14 telephone in the observation room didn't have
15 a direct outside line if the Department of
16 Correction had the funds to run a wire to
17 create an outside landline on a telephone,
18 correct?

19 A. May have. I don't remember the exact
20 conversation. It seems to me there was a
21 question about cell phones and I said cell
22 phones probably -- personal cell phones
23 probably would not be allowed, that the
24 Department would certainly look at options.
25 So I don't remember the exact conversation.

ABU ALI ABDUR'RAHMAN, ET AL. vs TONY PARKER, ET AL.
Transcript of Proceedings on 07/13/2018

In THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

ABU ALI ABDUR'RAHMAN,)
et al,)
)
Plaintiffs,)
)
vs.) NO. 18-183-II(III)
)
TONY PARKER, et al,)
)
Defendants.)

Transcript of Proceedings

Before the Honorable Ellen Hobbs Lyle

July 13, 2018

Volume 5

HUSEBY, INC.
Court Reporting Services
207 Washington Square Building
214 Second Avenue North
Nashville, Tennessee 37201
(615) 256-1935

1 high-risk sterile compounding products that
2 were imported into the State of Tennessee
3 from the New England Compounding Company?

4 You're aware of this, correct?

5 A. Not specifically, no.

6 Q. You're aware of the meningitis
7 outbreak?

8 A. Yes.

9 Q. And you were aware that the FDA or are
10 you aware that the U.S. Department of Health
11 and Human Services, Food and Drug
12 Administration, and the Center for Drug
13 Evaluation and Research has issued a guidance
14 for the industry? Are you aware of that?

15 A. I'm familiar that they have issued. I
16 don't know the particulars of it.

17 Q. Are you aware, sir, that there is a
18 statute that Congress passed a statute called
19 The Drug Quality and Safety Act?

20 A. I'm not familiar with the details of
21 that, no.

22 Q. Do you know it exists?

23 A. No.

24 Q. Are you aware, sir, that federal law
25 prohibits the compounding of drugs that are

1 commercially available?

2 A. Yes. I've heard that, yes.

3 Q. Are you aware, sir, that Pentobarbital
4 is commercially available in the United
5 States?

6 A. For the purpose of medical procedures?

7 Q. Are you aware that Pentobarbital is
8 available in the United States generally?

9 A. Yes.

10 Q. And so under federal law in normal
11 circumstances, it would violate federal law
12 to compound Pentobarbital, correct?

13 A. My interpretation of that, not being
14 an attorney, yes, it would be if you were
15 using it for the purpose of a medical
16 procedure there would be no reason to
17 compound it if you can purchase it for a
18 medical procedure.

19 Q. And the same is true for Midazolam,
20 correct?

21 A. Correct.

22 Q. And you are aware, sir, that federal
23 law or are you aware, sir, that federal law
24 defines a copy of the commercially available
25 drug is made when the same API, active

1 pharmaceutical ingredient, as is used in a
2 commercially available drug is also used for
3 the compounded drug, that the FDA calls that
4 a copy? Are you aware of that?

5 A. I'm not.

6 Q. Are you aware that federal law
7 prohibits the compounding of what is
8 essentially a copy?

9 A. I am not.

10 Q. And are you aware that federal law
11 requires that there must be documentation
12 provided of the shortage before a drug can be
13 compounded?

14 A. I am not.

15 Q. I want to ask you, sir, now about some
16 questions regarding the commercially prepared
17 Midazolam that the Department of Correction
18 had in its possession that has since expired.

19 Okay?

20 A. Okay.

21 Q. That drug had -- the manufacturer of
22 that drug sent you a letter requesting that
23 it be returned, did they not?

24 A. They did.

25 Q. You didn't read the entire letter,

1 correct?

2 A. Correct.

3 Q. Do you have retention policies at the
4 Department of Correction?

5 A. We do.

6 Q. Would a letter such as that be
7 required to be retained?

8 A. I'm not sure. I don't think so, but
9 I'm not sure. I'd have to check with legal.

10 Q. So is it your testimony that a letter
11 from a manufacturer of a drug to be used in
12 the lethal injection execution --

13 MR. SUTHERLAND: Your Honor, I
14 object to relevancy.

15 THE COURT: What is the
16 relevance?

17 MS. HENRY: The relevancy is,
18 Your Honor, to the transparency at the
19 Department of Correction. I believe
20 testimony from Debra Inglis will be that she
21 threw the letter away. And I think this is
22 important information where the Defendants
23 are alleging issues with respect to the
24 availability of drugs and whether they can or
25 can't get them because of certain division

1 controls.

2 MR. SUTHERLAND: You're talking
3 about Midazolam? The letter is about
4 Midazolam. So I don't know what relevance a
5 letter from a manufacturer has to do with a
6 facial challenge.

7 THE COURT: The Court overrules
8 the objection. Go ahead.

9 BY MS. HENRY:

10 Q. Is it your testimony, sir, that the
11 Department of Correction is not required to
12 keep a letter from a manufacturer that they
13 sent to the Department of Correction
14 regarding a drug that they made that we used
15 in a lethal injection execution?

16 A. I wouldn't know of no requirement.
17 Again, it's something I can research here
18 today. I don't know of any particular
19 requirement that requires us to maintain it,
20 no.

21 Q. Do you know where that letter is?

22 A. I do not.

23 Q. Did you pass that letter on to the
24 governor?

25 A. I didn't.

1 Q. The reason that they asked for the
2 drugs back is because they were delivered to
3 the Department of Correction in violation of
4 their distribution laws, correct?

5 MR. SUTHERLAND: Your Honor, I'm
6 going to object to Ms. Henry testifying about
7 what the letter says. We don't have a
8 letter. I mean, she's --

9 THE COURT: Yes. The Court
10 sustains the objection. We need to lay a
11 foundation. Is there a witness to testify to
12 this? Is this a phantom witness situation?
13 What's the foundation?

14 MS. HENRY: He testified to it in
15 his deposition. I wasn't going to impeach
16 him with his deposition.

17 THE COURT: Sure. Let's keep
18 asking. The Court overrules the objection.

19 BY MS. HENRY:

20 Q. The basis for the letter was that the
21 drugs had been obtained in violation of the
22 manufacturer's distribution controls,
23 correct?

24 A. Correct.

25 Q. However, you did decline to return to

1 the drugs at the time they were requested,
2 correct?

3 A. That's correct.

4 Q. Those same distribution controls exist
5 for Pentobarbital, correct?

6 A. I'm assuming they do, yes.

7 Q. And yet, other states have been able
8 to continue to obtain Pentobarbital, have
9 they not?

10 MR. SUTHERLAND: Objection.

11 Speculation and foundation.

12 THE COURT: Yes. Foundation.

13 BY MS. HENRY:

14 Q. Commissioner, you testified again that
15 you've done research on lethal injection,
16 correct?

17 A. Correct.

18 Q. You've spoken to your colleagues at
19 other Department of Correction, correct?

20 A. Correct.

21 Q. You have spoken with your colleagues
22 at the Department of Correction since this
23 issue of obtaining Pentobarbital came up,
24 correct?

25 A. That's correct.

1 Q. And are you aware that Texas has
2 executed seven inmates this year using
3 compounded Pentobarbital?

4 A. I'm aware that they have executed
5 inmates using Pentobarbital, yes.

6 Q. And are you aware that Georgia, as
7 recent as May 4th, 2018, has executed inmates
8 using compounded Pentobarbital?

9 A. That's correct.

10 Q. The rest of the information that you
11 possess with respect to the Department's
12 attempts to obtain any lethal injection
13 chemicals is based completely on information
14 that you heard from a third party, correct?

15 A. Let me get more clear.

16 Your drug procurer at the Department
17 of Correction, he's the person who's provided
18 you with information about what efforts or
19 lack of efforts the Department has made,
20 correct?

21 MR. SUTHERLAND: I object to the
22 pronoun, Your Honor.

23 THE COURT: It was meant
24 generically. Okay. Just use drug procurer
25 again.

1 THE WITNESS: The drug procurer
2 who has been charged with finding
3 Pentobarbital for the Department along with
4 myself and my conversations with other
5 individuals across America, we have failed to
6 find a solution --

7 MS. HENRY: Your Honor, I'm going
8 to object at this point in time. Attempting
9 to establish the basis of his knowledge is
10 hearsay, that is any further answer on behalf
11 of this witness as he just testified is going
12 to be hearsay. I would ask that the witness
13 be instructed not to respond further.

14 THE COURT: If you will ask him
15 the question again. Because the question was
16 is his knowledge limited to what he learns or
17 hears from the procurer and his answer is --
18 give me yes or no, Commissioner.

19 MR. SUTHERLAND: Your Honor, if I
20 could interject.

21 THE COURT: Yes.

22 MR. SUTHERLAND: Because this
23 will come up again. The Commissioner, this
24 information is relevant to a not hearsay
25 basis as to why the Department has taken the

1 steps to adopt a protocol, in other words,
2 not for the truth of what they have done, but
3 for the fact that as a result of what has
4 been done. Whatever that is irregardless of
5 the truth, it caused the Department,
6 specifically this individual --

7 THE COURT: You can ask about
8 that on cross-examination. They're asking
9 for a different reason, loss of availability
10 and for the Court to know what the universe
11 of information is here. I need the
12 Commissioner to give me a yes or no answer.
13 If you will repeat the question.

14 BY MS. HENRY:

15 Q. We'll just go straight to your
16 deposition. Okay?

17 In your deposition, sir, did you tell
18 me that you have not personally had a
19 conversation with any pharmacist or supplier
20 of LIC requesting whether they could provide
21 LIC?

22 A. That's correct.

23 Q. And did you tell me that any knowledge
24 you had is based upon conversations you had
25 with other individuals who are not pharmacies

1 or manufacturers of drugs?

2 A. That's correct.

3 Q. Commission Parker, the Department of
4 Correction has a pharmacy on site, correct?

5 A. That's correct.

6 Q. At the DeBerry Special Needs facility,
7 correct?

8 A. Correct.

9 Q. And that pharmacy has a DEA license,
10 correct?

11 A. That's correct.

12 Q. So they're capable of purchasing
13 controlled substances, correct?

14 A. Correct.

15 Q. And on June the 5th, 2018, you
16 testified that both protocols, Protocol A and
17 Protocol B, were selected, correct?

18 A. Correct.

19 Q. And that either protocol could be used
20 in an execution, correct?

21 A. Correct.

22 Q. And that it was your preference to use
23 Pentobarbital, correct?

24 A. Correct.

25 Q. You testified that Pentobarbital was

1 the preferred method of execution, correct?

2 A. Correct.

3 Q. Commissioner, is the Department of
4 Correction able to carry out an execution
5 using just Midazolam and Potassium Chloride?

6 A. I don't understand your question. We
7 have a three-drug protocol. We would have to
8 have all three drugs to carry out an
9 execution.

10 Q. If the second drug -- what role does
11 the second drug play in the execution?

12 A. The second drug is a paralytic that
13 paralyzes and stops the breathing.

14 Q. Will the Potassium Chloride alone kill
15 an inmate?

16 MR. SUTHERLAND: Objection.

17 Foundation.

18 THE COURT: The Court overrules
19 the objection.

20 THE WITNESS: I'm assuming it
21 could, yes.

22 BY MS. HENRY:

23 Q. If the Midazolam works as you intend
24 it to work and the Potassium Chloride will
25 kill the inmate, then the Vecuronium Bromide

1 really serves no purpose as far as bringing
2 about the death of the inmate, does it?

3 A. Well, from a layman's term or my
4 opinion, which I'm not a medical
5 professional, if the Potassium Chloride were
6 to stop the heart, obviously, that could kill
7 the inmate. So yes.

8 Q. And with respect to the issue of not
9 being a medical professional, when I asked
10 you in your deposition regarding the
11 consciousness check about signs that the
12 inmate might be conscious, what sorts of
13 signals they might give, you told me that
14 that called for a medical opinion, correct?

15 A. I may have. I don't remember exactly
16 what I said.

17 Q. So to be more specific, let's go to
18 Page 258. I'll back up a little bit for my
19 question and I'm going to try and ask these
20 questions quickly.

21 Do you need to see a copy of your
22 deposition?

23 A. Sure. That's okay. If you can put it
24 up on the monitor.

25 Q. If you could turn, sir, to Page 258.